83-958

NO._____

IN THE SUPREME COURT

of the

UNITED STATES

October Term 1983

PORT OF TACOMA
Petitioner,

vs.

PUYALLUP INDIAN TRIBE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Does the historical dependence of an Indian tribe on migratory salmon in a navigable river overcome the presumption against conveyance of river beds by the United States?

2. Under Article IV § 3 of the Constitution, can the President convey an interest in public lands by executive order?

3. Is the Puyallup Tribe, organized under the Indian Reorganization Act of 1934, 25 U.S.C. § 476, the legal successor in interest to an interest in land conveyed by an executive order in 1857?

4. Is the State of Washington a necessary party to an action to quiet title to the former bed of a navigable river in the State?

5. Under Washington law, is land exposed by channelization of a navigable stream deemed to be accreted to adjoining uplands?

6. If the answer to the preceding question is doubtful, should the District Court have certified to the Supreme Court of Washington a question as to the Washington law?

LIST OF PARTIES INVOLVED

The parties to this litigation are the Puyallup Tribe of Indians and the Port of Tacoma. The State of Washington and the United States of America are involved in that petitioner has asserted that they are necessary parties and should have been named as defendants.

A companion case, decided on the same day is *Muckelshoot Indian Tribe v. Trans-Canada Enterprises*, 713 F.2d 455 (9th Cir. 1983). A petition for certiorari has been filed in that case.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Other Authorities

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The Port of Tacoma, a municipal corporation of the State of Washington, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

This case is reported at 717 F.2d 1251 (9th Cir. 1983).

JURISDICTION

The Ninth Circuit denied Petitioner's petition for a rehearing *en banc* in this case on September 14th, 1983. This petition for certiorari

was timely filed within 90 days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

STATUTORY PROVISIONS AND TREATIES INVOLVED

Treaty of Medicine Creek, 10 Stat. 1132.

Text is set forth in Appendix A.

Executive Order of January 20th 1957, 1 Kappler 920.

Text, including recommendation it effectuated, is set forth in Appendix B.

STATEMENT OF THE CASE

The aboriginal inhabitants of the basin of Puget Sound and its tributary rivers, in what is now the State of Washington, were known as Coast Salish. They did not have tribes or chiefs, and lived in villages consisting of several families, which were situated along the rivers and streams. They subsisted on salmon from the rivers, as well as berries and other foods which they collected during the summer months during migratory food-gathering expeditions.

On December 26th 1854, the Treaty of Medicine Creek, 10 Stat. 1132, was entered into by Isaac Stevens, acting for the United States government, and Indians designated by him as representatives of various bands and groups of Coast Salish from the southern Puget Sound region. The government negotiators called one such group the Puyallup Tribe. [1] Article III of the Treaty assured to the Indian signatories "the right of taking fish, at all usual and accustomed grounds and stations . . . ." (Appendix "A"). Such right to take fish included fishing both inside and outside of several reservations which the same treaty established by Article II. The Puyallup reservation so created was not on or adjacent to the Puyallup River. It, and a reservation allotted to the Nisqually Indians, were unsatisfactory to the recipients, resulting in violence and in several killings.

At a meeting at Fox Island between government and Indian representatives in 1856, Governor Stevens assured the Indians that they

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1. By Article I of the Treaty, each of the Treaty Tribes relinquished to the United States all right, title and interest to the certain lands, including the land in issue.

would be given a new reservation on the Nisqually River and "One large Reservation on the Puyaloop." Following appropriate recommendations from the Commissioner of Indian Affairs and the Secretary of the Interior, President Pierce on January 20th 1857, set aside a tract, through which the Puyallup River flowed, as a substitute reservation for the Puyallups. (Appendix "B"). Parts of the reservation had been claimed by settlers under the Oregon Donation Act, 9 Stat. 496 (1850), but since the settlers' titles had not yet been confirmed by patent they were expelled without compensation other than for their improvements.

Washington was admitted to the Union in 1889. During the late 19th century all but two small tracts of the reservation land had been allotted or sold for the tribe by a commission created by Congress for that purpose (27 Stat. 633). That land, including all the up-land abutting the river, passed into private hands. Also during the late 19th century the Puyallup Tribe designated in 1854 by the Treaty negotiators languished, so that by 1909 the United States District Court for the Western District of Washington determined that it had been "disintegrated by the formal enfranchisement of its members." *United States v. Ashton*, 170 Fed. 509, 511 (1909). The tribal entity which brought this action was created following passage of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, *et seq.*

In 1918 the voters of Pierce County established the Port of Tacoma, a publicly-owned municipal corporation which owns and operates extensive marine terminals, warehouses and related facilities, and which leases space to industrial tenants. Directly and indirectly, it is a major source of employment and tax revenue in Pierce County.

In 1854 and continuing into the 20th century, the Puyallup River was migratory, changing its bed annually or seasonally. In this century local and federal projects have diked it, permitting use of former river bed tracts for homes, industries and farms. The part of the river involved in this case was channelized between 1948 and 1950 by the Corps of Engineers, without objection from the Puyallup Tribe. The Port of Tacoma is the owner of what were before the channelization, adjoining uplands to a bend in the river. Following the channelization the bend became dry land and has since been treated by the Port as accreted to its adjacent property. The exposed tract, consisting of approximately 12

acres, has been leased by the Port to its industrial tenants during the intervening years. It is physically separated from the channelized river by a road-topped dike, title to which is in the Corps of Engineers.

This suit was filed in 1980 by the Puyallup Tribe, seeking to quiet beneficial title in itself to the exposed former river bed and to expel the Port from it. The District Court concluded that in creating the reservation the United States had intended to convey beneficial title to the bottom of the Puyallup River, that plaintiff Tribe is the legal successor to the grantee under that conveyance, that neither the State of Washington nor the United States of America are necessary parties to this litigation, and that Washington law did not divest plaintiff of its beneficial title when the river was channelized. The Court denied the Port's motion to certify the issue of Washington law to the Supreme Court of Washington pursuant to R.C.W. 2.60.020.

On August 15th 1983, the Ninth Circuit Court of Appeals affirmed the District Court's judgment. The decision is reported at 717 F.2d 1251 (1983). On the same day the Court decided the companion case of *Muckleshoot Indian Tribe v. Trans-Canada Enterprises*, 713 F.2d 455 (9th Cir. 1983).

The petition for rehearing in this case was denied by the Court of Appeals on September 14th, 1983.

REASONS WHY WRIT SHOULD ISSUE

1. ***Montana v. United States***, 450 U.S. 544, 67 L.Ed. 493, 101 S.Ct. 1245 (1981).

In *Montana v. United States* this Court addressed the question of whether the United States conveyed beneficial ownership of the bed of the Big Horn River to the Crow Indian Tribe by the 1851 and 1868 Treaties of Fort Laramie. In holding that it did not, and that title to such submerged lands passed to the State of Montana on her admission to the Union, this Court stated the following doctrine:

> "But because control over the property underlying navigable waters is so strongly identified with the sovereign power of government, *United States v. Oregon*, *supra*, at 14, 79 L.Ed. 1267, 55 S.Ct. 610, it will not be held that the United States has con-

veyed such land except because of 'some international duty or public exigency'. *United States v. Holt State Bank*, 270 U.S. at 55, 70 L.Ed. 465, 46 S.Ct. 197. See also *Shively v. Bowlby*, *supra*, at 48, 39 L.Ed. 331, 14 S.Ct. 548. A court deciding a question of title to the bed of a navigable water must therefore, begin with a strong presumption against conveyance by the United States, *United States v. Oregon*, *supra*, at 14, 79 L.Ed. 1267, 55 S.Ct. 610, and must not infer such a conveyance 'unless the intention was definitely declared or otherwise made plain', *United States v. Holt State Bank*, *supra*, at 55, 70 L.Ed. 465, 46 S.Ct. 197, or was rendered 'in clear and especial words', *Martin v. Waddell*, *supra*, at 411, 10 L.Ed. 997, or 'unless the claim confirmed in terms embraces the land under the waters of the stream', *Packer v. Bird*, *supra*, at 672 L.Ed. 819, 11 S.Ct. 210." *Ibid.*, 450 U.S. at 552, 667 L.Ed.2d at 502, 101 S.Ct. at 1251.

The foregoing language from the *Montana* decision is controlling here because:

(A) The Puyallup Tribe's complaint states that the river bed was "reserved" by the Tribe in the Treaty of Medicine Creek and President Pierce's 1857 executive order. In the *Montana* case this Court pointed out that the Medicine Creek Treaty is "virtually identical" to the 1868 Fort Laramie Treaty in describing the nature of the reservation. *Ibid.*, 450 U.S. at 560, 67 L.Ed.2d at 507, 101 S.Ct. at 1256. That "virtually identical" language was there held to impute no intent by the government to convey the river bed.

The Courts here have held that the Medicine Creek Treaty imputed an intent diametrically opposite to that found in this Court in the "virtually identical" language of the Fort Laramie Treaty in the *Montana* case, *supra*.

The Court of Appeals below broadly held that the rule of construction expressed in *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 25 L.Ed. 617, 90 S.Ct. 1328 (1970), that treaties with the Indians must be interpreted as the Indians would have understood them, overcame the *Holt State Bank* presumption whenever certain general conditions arguably common to most Indian reservations in coastal or riverine areas were met:

"[W]e conclude that where a grant of real property to an Indian tribe includes within its boundaries a navigable water and the

> grant is made to a tribe dependent on the fishery resource in that water for survival, the grant must be construed to include the submerged lands if the government was plainly aware of the vital importance of the submerged lands and the water resource to the tribe at the time of the grant." (emphasis added). Opinion at page 13.

In arriving at this resolution of *Choctaw Nation* and *Montana*, the Court of Appeals disregarded the peculiarity of the historical circumstances behind the treaties at issue in *Choctaw Nation* which were delineated by this Court to distinguish that case in *Montana*, 450 U.S. at page 555–556 n. 5, *i.e.*, that the Choctaw Tribe had been repeatedly dispossessed by settlers and the government of lands solemnly promised to them before the treaties and the government promised them in the treaty that "no part of the land granted to them shall be embraced in any territory or state".

As well as the absence of circumstances similar to those considered in *Choctaw Nation*, the Court of Appeals below further disregarded the presence of a key promise made to the Puyallup Tribe without analogy to those considered in *Choctaw Nation*, to-wit, the promise in Article III of the Treaty of Medicine Creek of access to and use of all usual and accustomed fishing grounds and stations, regardless of whether they were incorporated in a future state or not. This Court has consistently held that the Puyallup Tribe's right to fish on the reservation is grounded in this Article III provision, independent of the land grant in Article II. See the *Puyallup Tribe v. Washington State Game Department* cases: Puyallup I, 391 U.S. 392, Puyallup II, 414 U.S. 44, and especially Puyallup III, 433 U.S. 165 at 174–175.

These very different circumstances behind the Treaty of Medicine Creek completely distinguish this case from *Choctaw Nation*. The Court of Appeals holding that the general condition of tribal defendants as fishing *requires* construction of a grant of reservation land around a navigable water to include the bed of that water contradicts the attention to historical circumstances which is the true ground of this court's opinion in *Choctaw Nation* and would emasculate the *Holt State Bank* presumption in all coastal or riverine areas.

(B) The Ninth Circuit Court of Appeals is itself divided on the effect of the Montana decision on the *Choctaw Nation* case, *supra*.

In the *United States v. Aranson*, 969 F.2d 654 (9th Cir. 1982), the Court of Appeals considered the impact of the *Montana* decision on the teaching of *Choctaw Nation*, stating as to its own earlier opinion:

> "We nevertheless construed the ambiguity in favor of the Tribes—an approach *Montana* rejects." *Id.* at 664.

An opposite result was reached in the case at bar, where a different panel of the Ninth Circuit Court of Appeals described the impact of the *Montana* decision on the *Choctaw Nation* case as follows:

> "Nor did [the Montana decision] gainsay the equally important proposition set forth in *Choctaw Nation* that 'treaties' with the Indians must be interpreted as they would have understood them, . . . and any doubtful expressions in them should be resolved in the Indians' favor'." *Puyallup Tribe v. Port of Tacoma*, *supra*, at 1257.

The distinction is critical, since at the Court panel in the *Aranson* case stated at footnote 7, page 664, the "inexact and ambiguous" treaty language in the *Choctaw Nation* case was "similarly vague" to that in the *Montana* decision ,where it was deemed insufficient to impute an intent to convey the river bottom. In the case at bar, on a record which is silent on the issue of intent, the Court panel resolved the question of intent in favor of the Indians. *Cf. Barsh & Henderson, Contrary Jurisprudence: Tribal Interests in Navigable Waterways Before and After Montana v. United States*, 56 Wash. L.Rev. 627 (1981), cited in the *Aranson* case at footnote 7, page 664. The authors, writing as advocates for the Indian position, there concede that the *Montana* decision overruled the *Choctaw Nation* and other cases since "in none of those cases were the submerged lands expressly named in the conveyance or treaty". *Id.* at 682. Such lands were not named or referred to in the case at bar.

(C) The principal ground on which the courts below distinguished the *Montana* decision is that fish were important to the Coast Salish diet, whereas the Crow Indians involved in the *Montana* case did not eat fish. (but *cf. Montana v. United States*, *supra*, 450 U.S. at 570, 67 L.Ed.2d at 513, 514, 101 S.Ct. at 1260 (dissenting opinion)).

While fish were a major part of the Coast Salish diet, that fact is irrelevant to land title. The fishing rights created by the Medicine Creek

Treaty were and are exercised throughout the waters of Puget Sound and its tributary rivers, the beds of which are owned by the State of Washington or its grantees. *Cf. Puyallup Tribe v. Washington Game Department*, 433 U.S. 165, 53 L.Ed.2d 667, 97 S.Ct. 2616 (1977). They existed in the waters of the Puyallup River following execution of the Medicine Creek Treaty in 1854 and creation of the reservation in 1857. The fact that the Indians fished in such waters is not a reason to impute to the President an intent to deed them the subadjacent river bed, any more than to deed them the beds of all other waters in which they fished. This is especially the case in view of the migratory nature of the river. If the Tribe claims ownership of whatever bed the river occupies at a given time, it cannot consistently claim the tract at issue here, which has been dry land since 1948.

Finally, we submit that a rule would be unjust and unworkable, which would make land titles depend on the proportions of fish in the diet of the former Indian inhabitants of an area. The infinite variety of such diets, the difficulty of ascertaining the fish consumption of each Indian group, and the arbitrary nature of whatever proportionate amount is determined to be decisive, all militate against adoption of any such doctrine.

2. **The 1857 executive order conveyed no interest.** Creation or enlargement of an Indian reservation by executive order conveys no title under Article IV § 3 of the Constitution. *Hynes v. Grimes Packing Co.*, 337 U.S. 86, 103, 93 L.Ed. 1231, 1247, 69 S.Ct. 968, 979 (1949); *Sioux Tribe v. United States*, 316 U.S. 317, 86 L.Ed. 1501, 62 S.Ct. 1095 (1942). This doctrine has been specifically applied to the Puyallup Reservation. *United States v. Ashton*, 170 Fed. 508, 519 (W.D. Wash.), where the Court held that "the executive orders making a reservation of public land for use by the Indians were not irrevocable, nor in any sense a grant of title". The subsequent history of allotment or sale as excess of all of the surrounding land demonstrate the intent of Congress that all Puyallup lands other than those required for allotment be disposed of. That "jurisdictional history" suggests this Court's observation in Puyallup III that the contention that the bed of the Puyallup River is retained in trust status is "at odds with the otherwise uncontradicted finding below". 433 U.S. at 174 n. 12.

3. **Plaintiff Tribe is not in any chain of title.** The Plaintiff, an entity created in 1935 under the Indian Reorganization Act of 1934, 25 U.S.C. § 476 *et seq.*, asserts that it is the legal successor in interest to persons who were grantees under the 1857 Executive Order. It adduced no instruments of conveyance from anyone. It relied on this Court's recognition of it, for the purpose of litigating treaty fishing rights, as the successor to Indian signatories to the Medicine Creek Treaty. As this Court simultaneously pointed out, however, fishing rights are limited to Article III of the Treaty. *Puyallup Tribe v. Department of Game*, 391 U.S. 392, 395, fn. 1, 20 L.Ed.2d 689, 88 S.Ct. 1725, 1726 (1968). We are here concerned with land title, which is claimed to be vested in a specific entity. To prevail, that entity must demonstrate a chain of title from the 1857 executive order. It has not attempted to do so.

4. **Washington law, which is controlling, is to the effect that land exposed by channelization accretes to the adjoining uplands.**

(A) This Court held in *Bonelli Cattle Co. v. Arizona*, 414 U.S. 313, 38 L.Ed.2d 526, 94 S.Ct. 517 (1973), that a river rechannelization created an accretion rather than an avulsion. Insofar as it held the issue to be one of federal rather than state law, the *Bonelli* decision was overruled by *State Land Board v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 50 L.Ed.2d 550, 97 S.Ct. 582 (1977).

In the meanwhile, however, the Washington Court of Appeals for the Division which includes Pierce County had adopted the *Bonelli* decision. *Strom v. Sheldon*, 12 Wn. App. 66, 527 P.2d 1382 (Div. 2, 1974). In that case, citing the *Bonelli* decision as "a striking illustration of this analysis" (12 Wn. App. at 71, 527 P.2d at 1385), the Court held that where a navigable channel had been dredged and the original riparian boundary placed on dry land, the resulting exposed land would be deemed to have accreted to the adjoining uplands. Since under the *Corvallis* decision, *supra*, the question of accretion is one of State law, the Port as owner of the adjoining upland is owner of the exposed river bottom.

(B) If there were a doubt as to the applicability of *Strom v. Sheldon*, *supra*, the issue should have been certified to the Supreme Court of Washington. Although the Port moved, pursuant to R.C.W. Ch. 2.60 for a certification of the question of Washington law to the Supreme

Court of Washington, no ruling was made on the motion and it was impliedly denied by the Court's judgment. Certification of such questions will be directed where local law is uncertain and the issue novel. *Lehman Bros. v. Schein*, 416 U.S. 386, 40 L.Ed.2d 215, 94 S.Ct. 1741 (1974). Such certification "saves time, energy, and resources and helps build a cooperative judicial federalism", *Ibid.*, 416 U.S. at 391, 40 L.Ed.2d at 220, 94 S.Ct. at 1744. The procedure should have been followed here.

5. The State of Washington should have been named as an indispensable party.

Except as specifically conveyed by the Congress, the beds of navigable waters in the Oregon Territory, including those on the Puyallup Reservation, were reserved by the United States as trustee for the future states, which succeeded to such title on admission to the Union. *United States v. Ashton*, 170 Fed. 509, 512–513 (1909). The State of Washington owned the bed of the Puyallup River unless it was conveyed to the Tribe by the 1857 Executive Order, and still owns it if the 1948 channelization was not the equivalent of an accretion. The State and the Port dispute the Tribe's position on the first issue, and the State and the Tribe dispute the Port's position on the second.

The Tribe did not, despite F.R.C.P. 19 (c), join the State as a party. The Port raised the issue of such non-joinder in the pre-trial order, and the State filed an amicus brief asserting that it claims the property. Nevertheless the State was not joined and its claim remains unresolved.

CONCLUSION

For the foregoing reasons petitioner respectfully requests that a writ of certiorari should issue to review the judgment of the Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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APPENDIX "A"

COPY OF THE TREATY OF DEC. 26, 1854, WITH THE NISQUALLY, PUYALLUP AND OTHER BANDS OF INDIANS.

FRANKLIN PIERCE, PRESIDENT OF THE UNITED STATES,

TO ALL AND SINGULAR TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS a Treaty was made and concluded on the She-nah-nam, or Medicine Creek, in the Territory of Washington, on the twenty-sixth day of December, one thousand eight hundred and fifty-four, between the United States of America and the Nisqually and other bands of Indians, which treaty is in the words following, to-wit: Articles of agreement and convention made and concluded on the She-nah-ham, or Medicine Creek in the Territory of Washington, this twenty-sixth day of December in the year one thousand eight hundred and fifty-four by Isaac I. Stephens, Governor and Superintendent of Indian affairs of the said Territory, and the undersigned chiefs, head-men, and delegates of the Nisqually, Puyallup, Steilacoom, Squawskin, S'Homamish, Steh-chas, T'Peeksin, Squi-aitl, and Sa-heh-wamish tribes, and bands of Indians occupying the lands lying round the head of Puget's Sound and the adjacent inlets, who for the purpose of this treaty, are to be regarded as one nation, on behalf of said tribes and bands, and duly authorized by them.

ARTICLE 1. The said tribes and bands of Indians hereby cede, relinquish and convey to the United States all their right, title and interest in and to the lands and country occupied by them, bounded and described as follows, to-wit:

Commencing at a point on the Eastern side of Admiralty Inlet, known as Point Pully, about midway between Commencement and Elliott Bays; thence running in a Southeasterly direction, following the divide between the waters of the Puyallup and Dwamish, or White Rivers, to the summit of the Cascade Mountains; thence Southerly along the summit of said Range, or a point opposite the main source of the Skookum Chuck Creek; thence to and down said Creek, to the coal mine; thence Northwesterly to the summit of the Black Hills; thence Northerly, to the upper forks of the Satsop River; thence Northeasterly,

through the portage known as Wilke's Portage, to Point Southworth, on the Western side of Admiralty Inlet; thence around the foot of Vashon's Island, Easterly and Southeasterly, to the place of beginning.

ARTICLE 2. There is, however, reserved for the present use and occupation of the said tribes and bands, the following tracts of land, viz: The small Island called Klah-che-min, situated opposite the mouths of Hammersley's and Totten's Inlets, and separated from Hartstene Island by Peale's Passage, containing about two sections of land by estimation; a square tract containing two sections, or twelve hundred and eighty acres on Puget's Sound near the mouth of the She-nah-ham Creek, one mile West of the Meridian line of the United States Land Survey and a square tract containing two Sections, or twelve hundred and eighty acres, lying on the South side of Commencement Bay; which which tracts shall be set apart, and, so far as necessary, surveyed and marked out for their exclusive use; nor shall any white man be permitted to reside upon the same without permission of the tribe and the Superintendant or agent. And the said tribes and bands agree to remove to and settle upon the same within one year after the ratification of this treaty or sooner if the means are furnished them. In the meantime it shall be lawful for them to reside upon any ground not in the actual claim and occupation of the citizens of the United States and upon any ground claimed or occupied, if with the permission of the owner or claimant. If necessary for the public convenience, roads may be run through their reserves and on the other hand, the right, of a way with free access from the same to the nearest public highway is secured to them.

ARTICLE 3. The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians in common with all citizens of the Territory and of erecting temporary houses for the purpose of curing, together with the privilege of hunting, gathering roots and berries, and pasturing their horses on open and unclaimed lands; Provided, however, that they shall not take shell fish from any beds staked or cultivated by citizens, and that they shall alter all stallions not intended for breeding horses and shall keep up and confine the latter.

In consideration of the above cession, the United States agree to pay to the said tribes and bands the sum of thirty-two thousand five hundred

dollars, in the following manner, that is to say: For the first year after the ratification hereof, three thousand two hundred and fifty dollars; for the next two years, three thousand dollars each year for the next three years, two thousand dollars each year; for the next four years, fifteen hundred dollars each year; for the next five years, twelve hundred dollars each year; for the next five years, one thousand dollars each year; all which said sums of money shall be applied to the use and benefit of the said Indians, under the direction of the President of the United States, who may, from time, to time, determine, at his discretion, upon what beneficial objects to expend the same. And the Superintendant of Indian Affairs, or other proper officer, shall each year inform the President of the wishes of said Indians, in respect thereto.

ARTICLE 5. To enable the said Indians to remove to and settle upon their aforesaid reservations, and to clear, fence, and break up a sufficient quantity of land for cultivation, the United States further agree to pay the sum of three thousand two hundred and fifty dollars, to be laid out and expended under the direction of the President, and in such manner as he shall approve.

ARTICLE 6. The President may hereafter, when in his opinion the interests of the Territory may require, and the welfare of the said Indians be promoted, remove them from either or all of said reservations to such other suitable place or places within said Territory as he may deem fit, on remunerating them for their improvements and the expenses of their removal, or may consolidate them with other friendly tribes or bands. And he may further at his discretion, cause the whole or any portion of the lands hereby reserved, or of such other land as may be selected in lieu thereof, to be surveyed into lots, and assigns the same to such individuals or families, as are willing to avail themselves of the privilege, and will locate on the same as a permanent home, on the same terms and subject to the same regulations as are provided in the Sixth Article of the treaty with the Omahas, so far as the same may be applicable. Any substantial improvements here-to-fore made by any Indian, and which he shall be compelled to abandon in consequence of this Treaty, shall be valued, under the direction of the President, and payment be made accordingly therefor.

ARTICLE 7. The annuities of the aforesaid tribes and bands shall not be taken to pay the debts of individuals.

ARTICLE 8. The aforesaid tribes and bands acknowledge their dependence on the Government of the United States and promise to be friendly with all citizens thereof, and pledge themselves to commit no depredations on the property of such citizens. And should any one or more of them violate this pledge, and the fact be satisfactorily proved, before the agent the property taken shall be returned, or in default thereof, or if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribes except in self defence, but will submit all matters of difference between them and other Indians to the Government of the United States, or its agents, for decision and abide thereby. And if any of the said Indians commit any other depredations on any other Indians within the Territory, the same rule shall prevail as that prescribed in this Article, in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial.

ARTICLE 9. The above tribes and bands are desirous to exclude from their reservations the use of ardent spirits and to prevent their people from drinking the same; and therefore it is provided, that any Indian belonging to said tribes who is guilty of bringing liquor into said reservations, or who drinks liquor, may have his or her proportion of the annuities withheld from him or her for such time as the President may determine.

ARTICLE 10. The United States further agree to establish at the general agency for the district of Puget's Sound, within one year from the ratification hereof, and to support, for a period of twenty years an agricultural and industrial school, to be free to children of the said tribes and bands, in common with those of the other tribes of said district, and to provide the said school with a suitable instructor or instructors, and also to provide a smithy and carpenter's shop, and furnish them with the necessary tools, and employ a blacksmith, carpenter, and farmer, for the term of twenty years, to instruct the Indians in their respective occupations. And the United States further agree to employ a physician to reside at the said central agency, who shall furnish medicine and advise to their sick, and shall vaccinate them; the expenses of the said school, shops, employees, and medical attendance, to be defrayed by the United States, and not deducted from the annuities.

ARTICLE 11. The said tribes and bands agree to free all slaves now held by them, and not to purchase or acquire others hereafter.

ARTICLE 12. The said tribes and bands finally agree not to trade at Vancouver's Island, or elsewhere out of the dominions of the United States; nor shall foreign Indians be permitted to reside in their reservations without consent of the Superintendant or agent.

ARTICLE 13. This Treaty shall be obligatory on the contracting parties as soon as the same shall be ratified by the President, and Senate of the United States.

Proclaimed March 3, 1855.

APPENDIX "B"

Nisqually Reserve,

in Puyallup Agency: occupied by Muckleshoot, Nisqually, Puyallup, Skwawksnomish, Stailakoom, and five other tribes, treaty of December 26, 1854.

DEPARTMENT OF THE INTERIOR,

Office of Indian Affairs, January 19, 1857.

SIR: The treaty negotiated on the 29th of December 1854, with certain bands of Nisqually, Puyallup, and other Indians of Puget Sound, Washington Territory (article 2), provided for the establishment of reservations for the colonization of Indians, as follows: (1) the small island called Klah-chemin. (2) A square tract containing two sections near the mouth of the She-nah-nam Creek. (3) Two sections on the south side of Commencement Bay.

The sixth article of the treaty gives the President authority to move the Indians from those locations to other suitable places within Washington Territory, or to consolidate them with friendly bands.

So far as this office is advised a permanent settlement of the Indians has not yet been effected under the treaty. Governor Stevens has formed the opinion that the locations named in the first article of the treaty were not altogether suitable for the purpose of establishing Indian colonies. One objection was that they are not sufficiently extensive. He reported that 750 Indians had been collected from the various bands for settlement.

I have the honor now to submit for your consideration and action of the President, should you deem it necessary and proper, a report recently received from Governor Stevens, dated December 5, 1856, with the reports and maps therewith, and as therein stated, from which it will be observed that he has arranged a plan of colonization which involves the assignment of a much greater quantity of land to the Indians, under the sixth article of the treaty, than was named in the first article. He proposes the enlargement of the Puyallup Reserve at the south end of Commencement Bay to accommodate 500 Indians: the change in the location, and the enlargement of the Nisqually Reserve, and the establishment of a new location, Muckleshoot Prairie, where there is a military station that is about to be abandoned.

The quantity of land he proposes to assign is not, in my opinion, too great for the settlement of the number of Indians he reports for colonization: and as the governor recommends the approval of these locations and reports that the Indians assent thereto, I would respectfully suggest that they be approved by the President, my opinion being that, should it be found practicable hereafter to consolidate the bands for whom these reserves, the authority to effect such objects will still remain with the President under the sixth article of the treaty.

Within the Puyallup Reserve there have been private locations and the value of the claims and improvements has been appraised by a board appointed for that purpose at an aggregate of $4,917.

In the same connection I submit the governor's report of August , 1856 which he refers to, promising that the proceedings of his conference with the Indians therein mentioned were not received here with the report.

Very respectfully, your obedient servant,

GEO. W. MANYPENNY, *Commissioner.*

Hon. R. McCLELLAND,

Secretary of the Interior.

PART III. EXECUTIVE ORDERS RELATING TO RESERVES.

DEPARTMENT OF THE INTERIOR.

Washington, January 20, 1857.

SIR: I have the honor to transmit a communication of the 19th instant, from the Commissioner of Indian Affairs to this Department, indicating the reservations selected for the Nisqually, Puyallup, and other bands of Indians in Washington Territory, and to request your approval of the same.

With great respect, your obedient servant,

R. McCLELLAND, *Secretary.*

The PRESIDENT.

Approved.

FRANKLIN PIERCE.

JANUARY 20, 1857